IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 485 of 1997

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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M B CHAVDA, CUSTOMS INSPECTOR

Versus

NIZAM S/OF MOHAMMAD

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Appearance:

1. Criminal Revision Application No. 485 of 1997

MR MUKESH R SHAH for Petitioner No. 1

MS SM AHUJA for Respondents Nos. 1-2

MR LR PUJARI, PUBLIC PROSECUTOR for Respondent No. 3

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CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 24/12/2001

ORAL JUDGEMENT

#. Heard the learned advocates.

#. This Revision Application under Section 397 read

with Section 401 CrPC has been preferred by the Customs Inspector against the judgment and order dated 31st July, 1997 passed by the learned Additional Chief Metropolitan Magistrate, Ahmedabad in Criminal Case No.114/97.

#. The respondents nos.1 and 2 herein were the accused in the above referred Criminal Case No.114/97. The said accused were alleged to have committed offence punishable under Section 135(1)(b) of the Customs Act, 1962 (hereinafter referred to as 'the Act'). The accused were alleged to have smuggled foreign currency worth Rs.7,91,210=00 and U.S. $400 in India. The said goods were confiscated under Section 111 of the Act. The said accused were tried and were convicted for offence punishable under Section 35(1)(b)(ii) of the Act. Both the accused were sentenced to Simple Imprisonment for eight months and a fine of Rs.2,000=00 each. For default in payment of fine, both the accused were sentenced to further Simple Imprisonment for one month. Feeling aggrieved, the prosecution has preferred the present Revision Application.

#. Learned counsel Mr.Shah has submitted that the foreign currency was recovered from the accused. The accused had pleaded guilty. Considering the gravity of the offence committed by the accused, the accused ought to have been sentenced with the maximum sentence (i.e. imprisonment for three years) that could be imposed upon the said accused. The learned Magistrate, however, has dealt with the accused leniently by imposing sentence of Simple Imprisonment for eight months only.

#. It appears that the learned Magistrate has considered special circumstances under which the accused were induced to commit the offence in question and the period of judicial custody undergone by the accused pending trial while imposing sentence upon the accused. I see no justification for interfering with the discretion exercised by the learned Magistrate, more than four years after the date of conviction, more particularly in the circumstances narrated by the accused in their Application Ex.52.

#. The Revision Application is dismissed. Rule is discharged.

24th December, 2001. ( Ms. R.M. Doshit, J. )

/sakkaf